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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

James Kukula, a married man,

Plaintiff,

v.

B/E Aerospace, Inc. Employee Benefit  
Plan, an ERISA benefit plan; B/E  
Aerospace, Inc. Benefits Committee, an  
ERISA plan administrator; and The  
Prudential Insurance Company of  
America, a plan fiduciary;

Defendants.

No.

**COMPLAINT**

For his claims against Defendant B/E Aerospace, Inc. Employee Benefit Plan (the “Plan”), Defendant B/E Aerospace, Inc. Benefits Committee (“the “Committee”) and Defendant the Prudential Insurance Company of America (“Prudential”) (collectively “Defendants”), Plaintiff James Kukula (“Plaintiff” or “Mr. Kukula”) alleges as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. This action arises under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. (“ERISA”).
2. B/E Aerospace, Inc. (B/E Aerospace) is the Employer and Plan Sponsor of the Plan.
3. The Plan and B/E Aerospace, a large corporation, have their principal place of business in the state of Florida. Prudential has its principal place of business in

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1 the state of New Jersey. Defendants Prudential and B/E Aerospace are licensed and  
2 authorized to do business in Pima County, Arizona, and reside and are found within  
3 Pima County within the meaning of the jurisdiction and venue provisions of ERISA, 29  
4 U.S.C. § 1132 and 28 U.S.C. § 1391.

5 4. The Plan is a single-employer welfare benefit plan under ERISA and is  
6 maintained for the exclusive benefit of eligible employees of B/E Aerospace. The Plan  
7 provides a comprehensive selection of employee welfare benefit programs (the  
8 “Programs”) including but not limited to, medical, dental, vision, life, short-term  
9 disability (“STD”), and long-term disability (“LTD”), and accidental death and  
10 dismemberment.

11 5. As the Plan Administrator, the Committee has the authority to control and  
12 manage the operation and administration of the Plan and the various Programs.

13 6. Mr. Kukula is informed and believes that the Committee is a named  
14 fiduciary of the Plan pursuant to 29 U.S.C. § 1133(2).

15 7. B/E Aerospace and the Committee administered the Plan to its employees,  
16 including Mr. Kukula.

17 8. Mr. Kukula is a participant and beneficiary of the Plan by virtue of his  
18 employment with B/E Aerospace.

19 9. Mr. Kukula is a married person. He resides in Tucson, Arizona.

20 10. Prudential is a licensed insurance company authorized to underwrite group  
21 LTD policies in Arizona.

22 11. Mr. Kukula is informed and believes that Prudential is either a “named  
23 fiduciary” of the Plan pursuant to 29 U.S.C. § 1133(2); a “deemed fiduciary” pursuant to  
24 29 U.S.C. § 1002 (21)(A); or a “designated fiduciary” pursuant to 29 U.S.C. §  
25 1105(c)(1)(B).

26 12. Prudential had actual or apparent authority to act as a fiduciary on behalf  
27 of the Plan.  
28

1           13. This Court has jurisdiction over the subject matter of this action under  
2 ERISA, 29 U.S.C. §§ 1132(a), 1132(e)(1), and 28 U.S.C. §§ 2201-02 (declaratory  
3 judgments).

4                                   **GENERAL ALLEGATIONS**

5           14. All previous and succeeding paragraphs are incorporated by reference.

6                                   ***Plan Structure***

7           15. The Plan was established May 1, 1989. It was amended and restated  
8 January 1, 2007.

9           16. Under the Plan, B/E Aerospace sponsors various benefit Programs for the  
10 exclusive benefit of its employees, including the B/E Aerospace, Inc. Short Term  
11 Disability Program (the “STD Program”) and the B/E Aerospace Long Term Disability  
12 Program (the “LTD Program”).

13           17. The Committee serves as the Plan Administrator of the Plan and is a  
14 named fiduciary of the Plan and its Programs.

15           18. As the Plan Administrator, the Committee has discretionary authority to  
16 construe and interpret the Plan and the Programs, including, without limitation,  
17 determining an employee’s eligibility to participate in and receive benefits under one or  
18 more of the Programs. In this capacity, the Committee has the authority to decide any  
19 matter and may adopt any rule or procedure regarding eligibility, benefits, claims or any  
20 other issue arising under the Plan that is necessary, desirable or appropriate in the  
21 administration of the Plan and the Programs, including factual determinations.

22           19. The Committee may allocate or delegate any responsibility regarding the  
23 Plan and the Programs among one or more persons. Such allocation or designation must  
24 be in writing and in the record of the Plan. It must also identify the person or persons to  
25 whom responsibility is delegated and the nature and scope of that responsibility.

26           20. On information and belief, Prudential fully insures claims under the LTD  
27 Program but serves as the claims administrator for the self-funded STD Program.  
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1           21. On information and belief, the STD Program is self-funded by B/E  
2 Aerospace. Because it is a self-funded program, liability for the payment of claims  
3 resides with B/E Aerospace.

4           22. On information and belief, the LTD Program is fully insured by a group  
5 disability insurance contract with Prudential. In exchange for premiums under group  
6 policy number G-45291-FL (the “Policy”), Prudential agreed to fully insure all LTD  
7 claims under the LTD Program and to assume financial liability for said claims. Mr.  
8 Kukula is informed and believes that Prudential continues to insure LTD claims under  
9 the LTD Program.

10           23. On information and belief, B/E Aerospace entered into separate contracts  
11 with Prudential to administer the STD Program and to insure the LTD Program.

12           24. With respect to the STD Program, Prudential agreed to render  
13 administrative services to B/E Aerospace beginning August 1, 2007 under  
14 Administrative Services Agreement No. 45291 (the “Service Agreement”).

15           25. Under the Service Agreement, Prudential provides administrative services  
16 to B/E Aerospace for the STD Program in exchange for a monthly service fee. Among  
17 the contracted services, Prudential accepts and processes claims. It also makes eligibility  
18 determinations and assists B/E Aerospace in determining the “*the duration of benefits,*  
19 *if any, for each such claim received.*” (emphasis added) In connection with these  
20 determinations, Prudential provides ongoing claims management. It communicates claim  
21 approvals and denials to participants. While B/E Aerospace makes the final claim  
22 determinations on appeal, Prudential provides “advice and assistance to [B/E Aerospace]  
23 in reviewing all appeals.”

24           26. Under the Service Agreement, Prudential also provides other optional  
25 services to B/E Aerospace including, but not limited to, cost and experience analysis and  
26 plan design.



1           34. To qualify for benefits under the LTD Program, Mr. Kukula had to satisfy  
2 the definition of “Disability” under the Plan and had to be continuously Disabled  
3 throughout and beyond the “Elimination Period.” The Elimination Period is 180 days  
4 from Mr. Kukula’s date of disability.

5           35. Under the LTD Program, the definition of Disability is nearly identical to  
6 the definition required under the STD Program. Under the terms of the Plan, Mr. Kukula  
7 is considered Disabled if he is “unable to perform the material and substantial duties of  
8 [his] regular occupation due to sickness or injury,” is “under the regular care of a  
9 doctor,” and “after the first twelve months of [his] disability, [he] ha[s] a 20% or more  
10 loss in [his] monthly earnings due to [his] sickness.”

11           36. Should Mr. Kukula remain continuously Disabled, he would potentially be  
12 entitled to receive LTD benefits through his Social Security Normal Retirement Age  
13 (“SSNRA”), which is 66 years and four (4) months or until October 10, 2022.

14           37. The LTD Program provides 60% of Mr. Kukula’s Monthly Earnings. Mr.  
15 Kukula’s Monthly Earnings are his gross monthly income from B/E Aerospace prior to  
16 his date of disability, and includes commissions and bonuses. Any commissions and  
17 bonuses are averaged over the 12 months immediately preceding his Disability.

18           38. While the Plan has exclusions and limitations for certain disabilities, it  
19 does not have an exclusion or limitation for self-reported symptoms. Prudential  
20 confirmed this in an Eligibility Review dated March 27, 2014.

21                           ***Mr. Kukula’s Claims for STD and LTD Benefits***

22           39. Mr. Kukula began working for B/E Aerospace on or about January 11,  
23 2011. As of his last day worked on October 30, 2013, Mr. Kukula worked as a Product  
24 Support Engineer earning approximately \$72,000.00 annually. Prior to that, he had  
25 worked for Raytheon Missile Systems as a Principal Logistics Specialist and for General  
26 Motors as an Advanced Vehicle Engineer for over 32 years. Prior to his Disability, Mr.  
27 Kukula had an uninterrupted work history spanning over 43 years.  
28

1           40. As a Product Support Engineer for B/E Aerospace, Mr. Kukula provided  
2 product and technical support for aircraft cabin interior products. He provided technical  
3 instructions regarding product usage, performance and troubleshooting, and repair and  
4 maintenance. He resolved product problems, communicated directly with customers, and  
5 provided onsite training and engineering changes. His engineering assignments involved  
6 equipment or product design, the testing of materials, preparation of specifications,  
7 process studies, and research investigations.

8           41. The demands of Mr. Kukula's regular occupation were considerable and  
9 included the following cognitive and physical abilities: the ability to read, analyze and  
10 interpret general business periodicals, professional journals, technical procedures, or  
11 governmental regulations; the ability to write reports, business correspondence, and  
12 procedure manuals; the ability to effectively present information and respond to  
13 questions from groups of managers, associates, clients, customers, and the general  
14 public; the ability to apply advanced mathematical concepts such as exponents,  
15 logarithms, quadratic equations, and permutations; the ability to apply mathematical  
16 operations to such tasks as frequency distribution, determination of test reliability and  
17 validity, analysis of variance, correlation techniques, sampling theory, and factor  
18 analysis; the ability to solve practical problems and deal with a variety of concrete  
19 variables in situations where only limited standardization exists; the ability to interpret a  
20 variety of instructions in written, oral, diagram, or schedule form; the ability to sit, use  
21 hands to handle or feel, talk and hear regularly; the ability to stand, walk, reach, stoop,  
22 kneel, crouch, and crawl occasionally; the ability to lift and/or move up to 25 pounds  
23 occasionally; and the ability to work in an environment with "moderate" noise levels.

24           42. By the end of his active employment in 2013, Mr. Kukula's medical  
25 conditions interfered with his ability to perform his job effectively. Mr. Kukula worked  
26 until he could no longer do so and sought STD benefits under the STD Program based on  
27 his inability to work.  
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1           43. In a letter dated December 6, 2013, Prudential approved Mr. Kukula's  
2 STD claim from November 7, 2013 through January 12, 2014. B/E Aerospace was  
3 notified of the approval.

4           44. As a result of subsequent reviews, Prudential extended Mr. Kukula's STD  
5 benefits through February 5, 2014.

6           45. In a letter dated March 24, 2014, Prudential notified Mr. Kukula that the  
7 STD Program would only provide benefits through April 30, 2014. In light of this date,  
8 Prudential advised Mr. Kukula that it was requesting additional information to determine  
9 his eligibility for LTD benefits. Mr. Kukula's LTD benefits would have become payable  
10 as of April 29, 2014.

11           46. During a "Claim Discussion" on March 31, 2014, Prudential designated  
12 Mr. Kukula's claim as "Flight Path: 4" claim.

13           47. In a letter dated April 3, 2014, Prudential advised Mr. Kukula that his STD  
14 benefits had been extended through April 6, 2014.

15           48. In a decision dated June 2, 2014, Prudential terminated Mr. Kukula's STD  
16 claim effective April 7, 2014 and denied his claim for LTD benefits (the "First Denial").  
17 Prudential concluded that based on its review of the file, it did not "find support for  
18 medically based restrictions or limitations for any condition." Prudential reasoned that  
19 because Mr. Kukula had reported the ability to drive, his "self-reported complaints of  
20 forgetfulness and impaired concentration [was] not sufficient enough so as to preclude  
21 [him] from all activities."

22           49. Prudential notified B/E Aerospace of the First Denial in a letter dated June  
23 11, 2014.

24           50. In a letter dated July 8, 2014, Mr. Kukula timely appealed the First Denial  
25 (the "First Appeal").

26           51. Mr. Kukula's First Appeal was assigned to Senior Appeals Analyst,  
27 Angelica Billines.  
28



1           52. On or about August 7, 2014, Ms. Billines referred Mr. Kukula's claim for  
2 an "independent file review." The file review was coordinated through University  
3 Disability Consortium ("UDC"). In the referral instructions to UDC, Ms. Billines  
4 requested that UDC assign the review to a physician with an Occupational Medicine  
5 background. Ms. Billines also requested that the physician reviewer respond to an  
6 enumerated set of questions. Ms. Billines directed the physician reviewer to consider and  
7 respond to Prudential's prior clinical reviews, instructing:

8  
9           Please reference the clinical assessment(s) in file completed by Susan Pack, RN  
10 on May 28, 2104 [sic]. Please provide a detailed explanation as to why your  
11 opinion is the same or differs from this prior clinical assessment. Please point to  
the specific documentation that supports your response.

12           53. With the referral to UDC, Ms. Billines provided all of Prudential's internal  
13 "SOAP notes," including those leading up to and which formed the basis for Prudential's  
14 First Denial.

15           54. UDC assigned the review to Dr. Garson Caruso, who has board  
16 certification in Occupational Medicine. In his Curriculum Vitae, Dr. Caruso represents  
17 himself as an "[i]ndependent physician consultant providing guidance, leadership and  
18 services focused on Work Disability Prevention and Management." His experience at the  
19 time, included providing medical consultation to AmTrust North America on 700  
20 workers compensation cases annually and also to CorVel Corporation on complex  
21 workers compensation claims. His experience also included file reviews for STD and  
22 LTD claims.

23           55. Dr. Caruso completed a medical file review on August 20, 2014 (the  
24 Report"). Without having evaluated Mr. Kukula in-person or reaching out to his treating  
25 providers, Dr. Caruso opined that Mr. Kukula did not have any significant capacity  
26 limitations or need for work restrictions from a physical or psychological basis. Dr.  
27 Caruso faulted Mr. Kukula for not having objective findings, stating:  
28

1 Dr. Mecikalski's stated limitations and restrictions appeared to be based on Mr.  
2 Kukula's subjective assertions and not on the doctor's semi-objective and  
3 objective findings, which, as documented above, were largely unremarkable.

4 56. Dr. Caruso agreed with the prior clinical review completed by Ms. Pack.

5 57. In an invoice dated August 21, 2014, UDC invoiced Prudential for Dr.  
6 Caruso's Report. At a rate of \$280.00 per hour, the final invoice was for \$1,190.00.

7 58. In a decision dated August 21, 2014, Prudential affirmed and upheld its  
8 prior decision to terminate Mr. Kukula's claim for STD benefits effective April 7, 2014,  
9 and to disallow his claim for LTD benefits effective April 29, 2014 (the "Second  
10 Denial"). The Second Denial was premised on Mr. Kukula's purported failure to satisfy  
11 the 180-day elimination period of continuous disability. Prudential relied exclusively on  
12 Dr. Caruso's Report.

13 59. The Second Denial was communicated to B/E Aerospace in a letter dated  
14 August 21, 2014.

15 60. The Second Denial did not comport with the notice requirements under  
16 ERISA. ERISA requires a "meaningful dialogue" between a claims administrator and a  
17 beneficiary. Under 29 C.F.R. § 2560.503(g)(iii), when a plan administrator denies a  
18 claim, the notification must provide "a description of any additional material or  
19 information necessary for the claimant to perfect the claim and an explanation of why  
20 such material or information is necessary." It must also be relayed in a manner  
21 calculated to be understood by the claimant. Prudential failed to identify what was  
22 needed for Mr. Kukula to perfect his claims under the STD and LTD Programs.

23 61. Although Mr. Kukula had exhausted his administrative remedies and had  
24 the option to sue, the Second Denial outlined a second, voluntary appeals process. The  
25 Second Denial advised that his decision to file a second appeal would not affect his  
26 rights to sue under ERISA. Mr. Kukula was instructed to submit the voluntary appeal to  
27 Ms. Billines.  
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1           62. With the assistance of counsel, Mr. Kukula requested all relevant  
2 information under ERISA as it pertained to both his STD and LTD claims under the  
3 Plan. This request was made in writing in a letter dated December 3, 2014.

4           63. Accompanying a letter dated December 4, 2014, Prudential provided all  
5 documentation, which it asserted, was relevant to Mr. Kukula's claim. Prudential did not  
6 explain the Flight Path designation. Prudential clarified Mr. Kukula's second, voluntary  
7 appeal deadline as March 2, 2015.

8           64. On March 2, 2015, Mr. Kukula submitted his second, voluntary appeal (the  
9 "Second Appeal"). He submitted his Second Appeal to Prudential and to B/E Aerospace  
10 in its capacity as the Plan Administrator. With his Second Appeal, Mr. Kukula provided  
11 new and additional documentation in support of his claims. Among the supplemental  
12 disclosures submitted on appeal, he provided disclosures from B/E Aerospace relating to  
13 the Plan, various functionality assessments completed by his treating physician, updated  
14 medical records, headache logs substantiating the nature, severity and duration of his  
15 headaches, medical literature regarding his conditions, and information related to his  
16 regular occupation as a Product Support Engineer, including information from the U.S.  
17 Bureau of Labor and the Occupational Information Network ("O\*NET"). With his  
18 Second Appeal, Mr. Kukula objected to Dr. Caruso's Report and Prudential's exclusive  
19 reliance on the Report.

20           65. Ms. Billines confirmed receipt of Mr. Kukula's Second Appeal in a letter  
21 dated March 9, 2015. She advised that she anticipated making a determination by April  
22 15, 2015. This deadline coincided with the initial forty-five (45) day review deadline  
23 under ERISA.

24           66. During the time Mr. Kukula's Second Appeal was pending, his contractual  
25 period of limitations was tolled under ERISA. Under 29 C.F.R. 2560.503-1(d), "[t]he  
26 claims procedures of a plan that provides disability benefits will be deemed to be  
27 reasonable only if the claims procedures comply, with respect to claims for disability  
28

1 benefits, with the requirements (b), (c)(2),(c)(3), and (c)(4) of this section.” Under  
2 section (c)(3), claims procedures will only be considered reasonable if, “[t]he plan agrees  
3 that any statute of limitations or other defense based on timeliness is tolled during the  
4 time that any such voluntary appeal is pending.”

5 67. Despite Mr. Kukula’s arguments against Dr. Caruso, on or about March  
6 16, 2015, Ms. Billines referred Mr. Kukula’s claim back to Dr. Caruso for an “addendum  
7 review.” In her referral instructions to UDC and to Dr. Caruso, Ms. Billines requested  
8 that his addendum report be returned to her no later than five (5) business days.

9 68. In a report dated March 30, 2015, Dr. Caruso completed his Medical  
10 Record Review Addendum (the “Addendum”). Dr. Caruso summarized the medical  
11 evidence, including the new evidence provided with Mr. Kukula’s Second Appeal. He  
12 noted that a provider had opined that Mr. Kukula’s headaches “where multifactorial,  
13 with both tension and migraine characteristics and probable contributions from sleep  
14 apnea and occipital neuralgia.” Dr. Caruso also noted Mr. Kukula’s exam findings of  
15 occipital tenderness and subdued reflexes and his intolerance to Topamax. He also  
16 discussed the recommendation for a trial of Botox injections, which was provided by Mr.  
17 Kukula’s treating provider, in an office visit on January 15, 2015.

18 69. Despite all of these findings, Dr. Caruso maintained his position that Mr.  
19 Kukula was not disabled. Again, he faulted Mr. Kukula for not providing “objective”  
20 proof of his disability, providing, “[t]he additional supplied medical information did not  
21 *objectively* report significant functional capacity limitation or medical indication for  
22 work restriction.” (emphasis added) In considering the opinions of Mr. Kukula’s  
23 treating providers, Dr. Caruso concluded that their restrictions and limitations were  
24 “excessive,” and not “medically indicated.” Dr. Caruso faulted Mr. Kukula’s treating  
25 providers stating that they “excessively relied upon the claimant’s self reported  
26 symptoms.”  
27  
28

1           70. Dr. Caruso's Addendum is replete with internal inconsistencies. As a basis  
2 for his opinion, he cited to the lack of objective evidence, yet stated, "[o]bviously there  
3 are *few if any objective manifestations of headache*." (emphasis added) Ironically, he  
4 also cited to the "Risk-Capacity Tolerance" paradigm to support his opinion that Mr.  
5 Kukula did not have functional impairments. With respect to tolerance, Dr. Caruso  
6 stated, "[c]hronic headache is a difficult problem in occupational medicine," in part,  
7 because "[t]here is *no objective way* for a physician to determine, and thus certify, that a  
8 given headache is severe enough to justify missing work on a given day." (emphasis  
9 added)

10           71. Dr. Caruso also addressed the January 28, 2015 Headache Residual  
11 Functional Capacity completed by Mr. Kukula's treating provider. He summarized the  
12 restrictions and limitations set forth by Mr. Kukula's provider, which noted bilateral  
13 headaches occurring twenty (20) times monthly and associated symptoms of inability to  
14 concentrate, nausea and vomited, photosensitivity, vertigo and visual disturbances. He  
15 noted that the provider has found Mr. Kukula's headache symptoms to be "credible,"  
16 and that "reduced light and noise levels" were required. Dr. Caruso responded that the  
17 "[need] to operate with reduced noise and light levels' did not relate to capacity  
18 limitations or risk (necessitating activity restrictions), but was more likely a function of  
19 tolerance, which [was] not a medical determination."

20           72. In his Addendum, Dr. Caruso also concluded that Mr. Kukula's providers  
21 had not "recorded mental status alterations or substantial medication side effects in the  
22 newly reviewed records." However, this is belied and contradicted by previous findings  
23 in his Addendum, which acknowledged Mr. Kukula's intolerance to various  
24 medications, including Topamax.

25           73. Dr. Caruso also responded to points raised by Mr. Kukula's attorney in his  
26 Second Appeal, specifically with respect to his biased review. Dr. Caruso defended his  
27 previous Report, stating, "[i]n complex cases such as the present one, an experienced  
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1 occupational physician can provide expertise on appropriate activity limitations and  
2 restrictions.” This “capability [was] based upon specialized training and experience  
3 analogous to that of other medical specialties, with a unique focus which is not  
4 possessed by most primary care and non-occupational specialist practitioners.” Dr.  
5 Caruso further stated, “[t]he *ultimate goal* of the conscientious reviewer in these cases is  
6 not claim denial per se, but rather *prevention of unnecessary work disability*, which is  
7 an undesirable occurrence for all stakeholders...” (emphasis added)

8 74. In an invoice dated March 30, 2015, UDC billed Prudential \$2,408.00 for  
9 Dr. Caruso’s Addendum.

10 75. Overall, Prudential paid UDC and/or Dr. Caruso \$3,598.00 in fees for his  
11 Report and Addendum.

12 76. Despite having the Addendum by March 30, 2015, Ms. Billines advised in  
13 a letter dated April 15, 2015, that she would require another forty-five (45) days or until  
14 May 30, 2015 to evaluate Mr. Kukula’s Second Appeal. Mr. Kukula did not receive this  
15 letter until April 20, 2015.

16 77. The April 15, 2015 letter did not comport with the notice extension  
17 requirements under ERISA. Under 29 C.F.R. § 2560.503-1, the notice should have been  
18 furnished to Mr. Kukula *prior to* the expiration of the initial 45-day review period. The  
19 notice also needed to indicate the “special circumstances” requiring the extension. No  
20 explanation was provided to Mr. Kukula other than a generic statement that the  
21 “extension was required to allow for finalization of a determination of [his] claims.”

22 78. In a letter dated April 16, 2015, Ms. Billines affirmed and upheld the prior  
23 decision to deny Mr. Kukula’s LTD benefits (the Final Denial”). Prudential denied Mr.  
24 Kukula’s LTD claim again for his purported failure to satisfy the requisite elimination  
25 period, stating in relevant part:

26 As a result, we have upheld our decision to disallow Mr. Kukula’s claim for LTD  
27 benefits effective April 29, 2014 as he has not satisfied the 180 day elimination  
28 period of continuous disability, defined above.

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1           79. In the Final Denial, Prudential advised Mr. Kukula that he would receive  
2 “separate correspondence regarding [his] claim for STD benefits.”

3           80. On the same day of the Final Denial, Ms. Billines emailed Sherri Sealey at  
4 B/E Aerospace and provided her with Prudential’s Appeal Recommendation (the  
5 “Recommendation”) for Mr. Kukula’s STD claim. Based on her review of the medical  
6 evidence, Ms. Billines recommended that the prior decision to terminate benefits be  
7 upheld. Ms. Billines requested that B/E Aerospace review her Recommendation and  
8 advise her of their decision on the claim.

9           81. In an email response on April 16, 2015, Ms. Sealey confirmed her receipt  
10 of Ms. Billines’ Recommendation. She advised that she had sent it to B/E Aerospace’s  
11 “internal legal” department to review and would contact her shortly once she had  
12 “confirmation from legal.”

13           82. After several days and without having received the STD decision, Mr.  
14 Kukula’s counsel sent a letter dated April 29, 2015 to Prudential and B/E Aerospace  
15 following up on the Final Denial and requesting the “separate correspondence” relating  
16 to his STD claim, which remained at that time outstanding. Mr. Kukula’s counsel  
17 commented that it was unclear as to why Prudential would have issued Mr. Kukula’s  
18 LTD denial prior to the decision on the STD claim especially since the denial was  
19 predicated on Mr. Kukula’s failure to satisfy the requisite elimination period for his LTD  
20 claim. Mr. Kukula’s counsel advised that the elimination period for Mr. Kukula’s LTD  
21 claim coincided directly with the remaining duration of the STD claim. Because of these  
22 actions and other procedural errors committed throughout the claim and appeals  
23 processes, Mr. Kukula’s counsel requested that B/E Aerospace intervene and review  
24 Prudential’s behavior on the claim.

25           83. On May 26, 2015, Ms. Sealey emailed Ms. Billines and provided a copy of  
26 B/E Aerospace’s final decision as it related to its review of Mr. Kukula’s STD claim. In  
27 the decision, B/E Aerospace advised Ms. Billines that “as the plan administrator of the  
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1 B/E Aerospace, Inc. Employee Benefit Plan (the “Plan”), [the Committee had]  
2 “approved Mr. James C. Kukula’s voluntary appeal for short-term disability benefits  
3 under the Plan” following “a careful review of all information in the administrative  
4 record, including *Prudential’s findings and recommendations*.” (emphasis added)  
5 Prudential was instructed to notify Mr. Kukula and to proceed with payment of his STD  
6 benefits.

7 84. By virtue of its decision to reinstate Mr. Kukula’s STD benefits through  
8 the maximum benefit period, B/E Aerospace rejected Ms. Billines’ Recommendation  
9 and Dr. Caruso’s Report and Addendum.

10 85. In a letter dated May 27, 2015, Ms. Billines advised Mr. Kukula that his  
11 STD benefits has been reinstated as of April 7, 2014 and terminated effective May 1,  
12 2014 for “reaching the maximum duration of benefits payable under the [P]lan.”

13 86. On June 5, 2015, B/E Aerospace issued a check to Mr. Kukula in the  
14 amount of \$1,989.11. This payment purportedly reflected the STD benefits owed, after  
15 taxes.

16 87. Since his last day worked, Mr. Kukula has remained Disabled under the  
17 Plan and Policy.

18 88. Mr. Kukula has seen various specialists for his symptoms without relief.

19 89. Mr. Kukula cannot perform the material duties of his Regular Occupation.

20 90. Mr. Kukula continues to be Disabled as defined by the Plan and Policy for  
21 LTD benefits.

22 91. Mr. Kukula has exhausted his administrative remedies under the Plan.

23 92. Mr. Kukula satisfied all of the jurisdictional prerequisites to filing his  
24 claims, and his claims are timely before this Court.

25 93. On information and belief, Mr. Kukula may be entitled to additional  
26 benefits from B/E Aerospace as a Disabled employee including, but not limited to,  
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1 health insurance, life insurance, supplemental LTD benefits, and retirement/pension  
2 credits.

3  
4 **COUNT I**  
5 **(Recovery of Plan Benefits)**  
6 **(Prudential & the Plan)**

7 94. All previous and succeeding paragraphs are incorporated by reference.

8 95. The Plan is a single-employer welfare benefit plan under ERISA, 29  
9 U.S.C. § 1002.

10 96. The Plan provides LTD coverage and a promise to pay benefits until Mr.  
11 Kukula is no longer Disabled under the terms of the Plan.

12 97. Mr. Kukula became Disabled in October 2013 and continues to be  
13 Disabled. Due to his medical conditions and the supporting medical evidence, Mr.  
14 Kukula would not be able to reliably perform his Regular Occupation in a satisfactory  
15 manner. He has claimed the LTD benefits under the Plan to which he is entitled.

16 98. Mr. Kukula reasonably expected that his conditions met the requirements  
17 of Disability as defined by the Plan, and that he would receive benefits under the Plan  
18 until he was no longer Disabled or until his SSNRA.

19 99. Despite the coverage of Mr. Kukula's Disability, Prudential improperly  
20 denied Mr. Kukula's LTD benefits in breach of the Plan. This breach was arbitrary,  
21 capricious, an abuse of discretion, not supported by substantial evidence, and clearly  
22 erroneous.

23 100. Prudential's determination that Mr. Kukula was not entitled to LTD  
24 benefits was influenced by an improper conflict of interest. Mr. Kukula is informed and  
25 believes that Prudential denied Mr. Kukula's claim to avoid liability on the LTD claim.

26 101. Prudential's structural conflict of interest manifests in the form of "flight  
27 paths;" instead of evaluating a participant's eligibility based on the applicable plan  
28 language and medical evidence, Mr. Kukula is informed and believes that Prudential  
makes claims decisions based on the claims resources and financial risk it faces on

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1 certain claims. Mr. Kukula's claim was designated early on in Prudential's claims  
2 process as a "Flight Path 4" claim by Prudential employees, including Dawn Trudelle  
3 and Chris Riggott. Despite several requests for clarification, and despite its clear  
4 relevance to Prudential's handling of Mr. Kukula's claim, Prudential has refused to  
5 disclose relevant documents related to its "flight path" designations.

6 102. On information and belief, Prudential's employees were financially  
7 incentivized to deny Mr. Kukula's claim for benefits. Mr. Kukula is informed and  
8 believes that Prudential incentivizes its employees to "manage" claims in Prudential's  
9 best interests, including but not limited to his claim. Prudential's flight path arrangement  
10 is a breach of fiduciary duty requiring appropriate equitable relief following discovery  
11 on the meaning of "flight paths" as it relates to Mr. Kukula's claims handling.

12 103. In denying his claim for LTD benefits, Prudential ignored credible medical  
13 evidence, which supported his eligibility for benefits. Prudential disregarded critical  
14 medical records from Mr. Kukula's treating providers as well as other relevant  
15 information regarding his symptoms, his medication intolerance and side effects, and his  
16 difficulties with activities of daily living.

17 104. Given Mr. Kukula's worsening health issues, he cannot engage in his  
18 Regular Occupation.

19 105. Prudential acted arbitrarily and capriciously in evaluating Mr. Kukula's  
20 claim. It selectively reviewed his medical records, unreasonably disregarded supporting  
21 documentation during the appeals processes, and failed to procure necessary medical  
22 reviews by qualified reviewers, both internally and externally.

23 106. Dr. Caruso intentionally misstated the medical evidence and the  
24 assessments of Mr. Kukula's treating providers.

25 107. Dr. Caruso and Prudential arbitrarily reached their opinions based on  
26 insufficient evidence or investigation. They did not personally evaluate Mr. Kukula nor  
27 did they perform their due diligence with respect to getting proper clarification from Mr.  
28

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1 Kukula's treating providers. In fact, no outreach was made to his providers, even where  
2 there was disagreement regarding his functionality.

3 108. Prudential and Dr. Caruso cherry-picked Mr. Kukula's medical records to  
4 create a selective and incomplete rendition of Mr. Kukula's medical history.

5 109. Prudential improperly failed to consider Mr. Kukula's subjective  
6 complaints, as well as the side effects of his medications, in determining whether he was  
7 Disabled under the Plan. Mr. Kukula's complaints were credible and accepted by his  
8 treating physicians. Prudential has not articulated compelling reasons for discounting his  
9 subjective complaints.

10 110. Prudential failed to explain why it credited Dr. Caruso's opinions over Mr.  
11 Kukula's treating physicians. Prudential unreasonably relied on Dr. Caruso's Report and  
12 Addendum when it knew he had conducted inadequate and biased reviews.

13 111. Ms. Pack and Dr. Caruso did not have the requisite knowledge, experience  
14 or training to opine on Mr. Kukula's medical conditions or ability to work and should  
15 not have been considered over the weight of Mr. Kukula's treating providers.

16 112. Prudential unreasonably credited unreliable evidence over reliable  
17 evidence in its administration and review of Mr. Kukula's claims, making its  
18 determination contrary to the clear weight of the medical evidence.

19 113. Prudential deliberately conducted biased investigations. It avoided and  
20 unreasonably failed to review all of the medical evidence fully and fairly in an effort to  
21 avoid financial liability on his claim.

22 114. Prudential used personnel and reviewers who lacked adequate training and  
23 experience to evaluate Mr. Kukula's claim.

24 115. Prudential engrafted additional requirements onto the Policy and Plan that  
25 were not contemplated by the parties or required by the Policy and Plan, including but  
26 not limited to its requirement for "objective" evidence. Prudential rejected Mr. Kukula's  
27 medical records based on his "self-reported complaints." However, the Plan and Policy  
28

1 does not have an objective medical evidence requirement. There is no exclusion or  
2 limitation for self reported symptoms. Even when Mr. Kukula presented objective  
3 medical evidence, Prudential unreasonably ignored it.

4 116. Prudential produced incomplete claims procedure guidelines and failed to  
5 indicate which procedures were relied upon in its denial of Mr. Kukula's benefits.

6 117. Because of Prudential's improper conduct, Mr. Kukula was denied a full  
7 and fair review of his claim.

8 118. Mr. Kukula is informed and believes Prudential managed his claim with  
9 the intent to deny his LTD benefits. The record supports that Prudential placed its  
10 financial interests above Mr. Kukula's best interests in administering his claim.

11 119. Prudential's bad faith and structural conflict is also evidenced in part by its  
12 many procedural irregularities. Prudential's procedural irregularities include but are not  
13 limited to: behaving as an adversary bent on denying his claim; impermissibly "cherry  
14 picking" only evidence favorable to Prudential from Mr. Kukula's file; failing to credit  
15 Mr. Kukula's subjective complaints and improperly demanding objective evidence;  
16 allowing the same appeals analyst (Ms. Billines) and physician reviewer (Dr. Caruso) to  
17 review Mr. Kukula's First and Second Appeals; and making a determination regarding  
18 Mr. Kukula's eligibility for LTD benefits prior to deciding his eligibility for STD  
19 benefits.

20 120. Prudential provided Dr. Caruso with its internal notes, which was a  
21 procedural violation of ERISA. It did nothing to insulate the voluntary, appeal process  
22 from the first appeal process and used the same appeals analyst and physician reviewer  
23 throughout Mr. Kukula's administrative appeals in violation of ERISA. *See* 29 C.F.R.  
24 2560.503-1(h)(3)(ii)(h)(4) (requires claim fiduciaries to "[p]rovide for a review that does  
25 not afford deference to the initial adverse benefit determination and that is conducted by  
26 an appropriate named fiduciary of the plan who is neither the individual who made the  
27  
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1 adverse benefit determination that is the subject of the appeal, nor the subordinate of  
2 such individual.”).

3 121. As a practice, Prudential allows the same appeals analyst and physician  
4 reviewer to consider and review the Second Appeal. This practice is codified in  
5 Prudential’s internal 2015 Group Disability Memorandum and practically allows its  
6 appeals analysts to review their own work:

7  
8 The voluntary appeal will also be assigned to the ARU [Appeals Review Unit],  
9 and may be determined by the ARU member who reviewed and determined the  
10 mandatory appeal or another ARU member. If a medical professional is required  
11 to review medical information as part of the voluntary appeal, then that review  
12 may be performed by the same medical professional who reviewed the mandatory  
13 appeal...

14 122. In the event that B/E Aerospace properly delegated Prudential with  
15 discretionary authority, Prudential’s numerous procedural errors rise to the level of a  
16 “wholesale and flagrant” violation of ERISA, entitling Mr. Kukula to *de novo* review  
17 with a bench trial on the record.

18 123. If Prudential is entitled to review under an abuse of discretion standard,  
19 this Court should review Prudential’s decision with heavy skepticism, because there is  
20 ample evidence of Prudential’s malice, self-dealing, and biased claims handling as a  
21 result of its conflicted status.

22 124. On information and belief, Prudential has not established any safeguards to  
23 insulate its decision-making process against its significant structural conflict of interest.

24 125. Mr. Kukula has afforded Prudential every opportunity to act prudently and  
25 to fairly consider his claim but instead, Prudential pursued a predetermined flight path to  
26 deny Mr. Kukula’s claim, regardless of the medical evidence provided on appeal.

27 126. Pursuant to the coverage provided under the Plan and under ERISA 29  
28 U.S.C. § 1132(a)(1)(B), Mr. Kukula is entitled to recover all benefits due under the  
terms of the Plan, and to enforce his rights under the Plan.

129. Mr. Kukula is also entitled to prejudgment interest on the benefits to which he is entitled and on his damages at the highest legal rate until paid in full.

134. Prudential owed fiduciary duties to Mr. Kukula, and breached those duties by acting directly against Mr. Kukula's interests for its own gain. Prudential failed to administer the Plan prudently and in Mr. Kukula's best interests. It failed to present the medical facts accurately and failed to provide a fair and reasonable evaluation, which

1 considered all available medical evidence, both objective and subjective, that supported  
2 impairment.

3 135. On information and belief, Prudential's conduct was motivated by financial  
4 considerations, caused by its structural conflict of interest as both decision maker and  
5 payer of Mr. Kukula's LTD benefits. Prudential has failed to produce any evidence that it  
6 protected Mr. Kukula from its conflict and instead intentionally withheld information that  
7 would have otherwise revealed the depth of its self-interested conduct. This includes  
8 information regarding its flight path designations, which is considered relevant under  
9 ERISA.

10 136. Prudential was unjustly enriched as a result of its breach of fiduciary duty  
11 violations to Mr. Kukula, because it wrongfully withheld benefits for its own profit.

12 137. For Prudential's conduct, Mr. Kukula is entitled to equitable relief, which  
13 could take the form of injunctive or mandamus relief. This Court could enjoin Prudential  
14 from employing and/or relying on medical records reviews to determine a claimant's  
15 functionality, where a claimant's functionality is in dispute and the physician consultant  
16 had neither examined nor contacted the claimant's treating providers for clarification.  
17 The Court could also enjoin and/or preclude Prudential from using the same appeals  
18 analyst and/or physician consultant for both the first and second appeals, which was the  
19 case with Mr. Kukula's claim. It could also enjoin the same analyst from making  
20 decisions on both the STD and LTD claims, where the claimant's transition to LTD is  
21 imminent. Lastly, the Court could enjoin Prudential from relying on medical opinions  
22 that are outside the scope of that reviewer's knowledge, experience, and specialty. For  
23 instance, Dr. Caruso, is an occupational medicine physician. He does not have specialty  
24 training or certification in neurology, yet was deemed more credible than Mr. Kukula's  
25 treating providers.

26 138. Prudential owed a duty of loyalty to Mr. Kukula but instead acted with bad  
27 faith, which constitutes a violation of its fiduciary duty. Mr. Kukula is informed and  
28



1 believes that Prudential managed his claim with the intent to deny his claim in order to  
2 avoid financial liability. The duty of loyalty prohibits Prudential from favoring its own  
3 interests over Mr. Kukula.

4 139. On information and belief, Prudential does not have proper safeguards to  
5 ensure that its focus on profitability does not affect how its employees handle, evaluate,  
6 and assess claims.

7 140. On information and belief, as an institution, Prudential uses claim payment  
8 reduction goals and cost containment measures as a method of profitmaking for the  
9 company. In doing so, Prudential unfairly and arbitrarily reduces or denies payments on  
10 legitimate claims in an across-the-board fashion to attain its numerical reduction goals.  
11 Prudential's cost containment measures are consistent with and part of a corporate-wide  
12 plan and scheme.

13 141. On information and belief, Prudential offers incentive or bonus programs to  
14 award and encourage employees to meet its savings and operational goals. This includes  
15 variable compensation to its claims managers, appeals analysts, and internal clinical staff.

16 142. On information and belief, Prudential instructs and/or incentivizes its  
17 employees to terminate otherwise legitimate claims, including Mr. Kukula's.

18 143. Under ERISA, a plan administrator and/or insurance company engages in a  
19 fiduciary act when making a determination about whether a claimant is entitled to  
20 benefits under the terms of the plan.

21 144. Prudential arbitrarily and capriciously denied Mr. Kukula's benefits, which  
22 constitutes a breach of fiduciary duty.

23 145. Mr. Kukula relied on the Plan to his detriment, believing that he was entitled  
24 to LTD benefits pursuant to the provisions of Policy and the Plan.

25 146. In addition to injunctive and/or mandamus relief, Mr. Kukula may be found  
26 to be entitled to surcharge as a result of the actual harm he suffered. As a result of  
27 Prudential's breaches, Mr. Kukula depleted his savings and had to forego recommended  
28



1 treatment including, but not limited to, Botox injections for his headaches.

2 147. Surcharge is a kind of equitable monetary remedy against a trustee, which  
3 puts the beneficiary in the position he would have attained but for the trustee's breach.  
4 Surcharge extends to a breach of trust committed by a fiduciary encompassing any  
5 violation of a duty imposed upon that fiduciary.

6 148. The fact that surcharge takes the form of monetary compensation does not  
7 remove it from the scope of appropriate equitable relief.

8 149. In equity, the Court could make Mr. Kukula whole following Prudential's  
9 breach and mold the relief to protect the rights of Mr. Kukula. The Court has broad  
10 discretion to fashion appropriate relief.

11 150. On behalf of the Plan, this Court should enjoin Prudential as most  
12 appropriately determined upon further discovery, as well as provide other equitable relief  
13 this Court deems appropriate.

14 151. As the Plan Sponsor and Administrator, B/E Aerospace retained ultimate  
15 responsibility and authority regarding the administration of the Plan and the STD and  
16 LTD Programs. Because of its continued responsibility, B/E Aerospace has a  
17 responsibility to review Prudential's behavior as a fiduciary of the Plan.

18 152. Under the Service Agreement, B/E Aerospace reserved the right to conduct  
19 audits of Prudential and claims made under the Plan. It was also required to establish  
20 "performance service levels," including but not limited to, standards for plan  
21 administration, customer service, phone service and abandonment rates, timeliness of  
22 enrollment, underwriting and claim transactions.

23 153. B/E Aerospace acted imprudently by failing to oversee Prudential's claims  
24 administration. B/E Aerospace, as the Plan Administrator, knew or should have known  
25 that Prudential handled claims against the best interests of its employees and not  
26 pursuant to the Plan.  
27  
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1           154. On information and belief, B/E Aerospace, as the Plan Administrator, did  
2 not periodically review Prudential's actions as a purported delegated fiduciary under the  
3 Plan.

4           155. On information and belief, B/E Aerospace's failure to periodically review  
5 Prudential's actions as a delegated fiduciary under the Plan was unreasonable and  
6 constituted a breach of fiduciary duty.

7           156. On information and belief, if B/E Aerospace did periodically review  
8 Prudential's actions as a delegated fiduciary under the Plan, then its periodic reviews  
9 were unreasonable and constituted a breach of fiduciary duty.

10           157. On information and belief, B/E Aerospace is liable for Prudential's actions,  
11 because B/E Aerospace violated its fiduciary obligations by failing to protect the Plan  
12 and Plan Participants from Prudential's conflicted, unchecked and adversarial claims  
13 handling.

14           158. On information and belief, B/E Aerospace knew or should have known  
15 that Prudential improperly handles claims insured under the Policy in an effort to avoid  
16 financial liability on LTD claims.

17           159. ERISA "does not elsewhere adequately remedy" the injuries caused to Mr.  
18 Kukula by Defendants' breach of fiduciary duty violations. Even if Mr. Kukula were to  
19 recover the benefits due to his under 29 U.S.C. § 1132(a)(1)(B), this would not provide an  
20 adequate remedy for the injuries he sustained. Furthermore, there would be nothing  
21 precluding or estopping Prudential from engaging in the same imprudent claims practices  
22 that it has engaged in. This is especially true if Mr. Kukula's claim is remanded back  
23 down to Prudential for further proceedings regarding his eligibility for benefits.

24           160. Mr. Kukula is entitled to equitable relief for Defendants' breach of their  
25 fiduciary duties, including for the breaches committed by any agents or third parties for  
26 Prudential and the Committee. This includes UDC and Dr. Caruso.

27           161. Because Defendants breached their fiduciary duties, Mr. Kukula was  
28

1 actually harmed.

2 162. Pursuant to 29 U.S.C. § 1132(g), Mr. Kukula is entitled to recover his  
3 attorneys' fees and costs incurred herein from Prudential.

4 163. Prudential must return any benefits or profits resulting from its breach to  
5 Mr. Kukula. By denying Mr. Kukula's claim for LTD benefits, Prudential was unjustly  
6 enriched.

7 164. As a direct and proximate result of Defendants' breaches of fiduciary duty,  
8 Mr. Kukula suffered actual financial harm and incurred financial expenses.

9 165. Mr. Kukula is entitled to injunctive and/or mandamus relief under 29  
10 U.S.C. § 1132(a)(3). He is entitled to enjoin any act or practice by Prudential and/or the  
11 Committee that violates ERISA or the Plan, and he is entitled to other appropriate  
12 equitable relief that is traditionally available in equity.

13 WHEREFORE, Mr. Kukula prays for entry of judgment against Defendants as  
14 follows:

- 15 A. For all past LTD benefits under the terms of the Plan;  
16 B. For an award of prejudgment interest on his LTD benefits at the highest  
17 legal rate until paid in full; and  
18 C. Clarifying and determining his rights to future benefits under the terms of  
19 the Plan;  
20 D. For all other equitable relief that is proper as a result of Defendants' breach  
21 of fiduciary duties;  
22 E. For an award of Mr. Kukula's attorneys' fees and costs incurred herein;  
23 F. For such and further relief as the Court deems just and reasonable.  
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1 Dated this 19th day of February, 2016.

2  
3 OBER & PEKAS, PLLC

4 By: s/ Kristin Kalani  
5 Kristin Kalani  
6 Erin Rose Ronstadt  
7 Attorneys for Plaintiff  
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